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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

Original Application No. 103 of 1986

Date of decision : April 3 ,1987

Ramesh Kumar Reddy & ..... Petitioners  
Phoolchand Sharma

Versus

Union of India & others ..... Respondents

M/s B.Pal, B.Bang, ..... For Petitioner  
R.Behera, O.N.Ghose

Mr A.B Misra, Senior Standing ..... For Respondents  
Counsel(Central)

C O R A M

THE HON'BLE MR B.R PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR K.P ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgement ? Yes.
2. To be referred to the reporters or not ? Yes.
3. Whether Their Lordships wish to see the fair copy of the judgement ? Yes.

J U D G E M E N T

B.R. PATEL, VICE-CHAIRMAN,      The petitioners who were Junior Technical Assistants under the Dandakaranya Development Authority were promoted to the next higher rank of Senior Technical Assistants vide Order No.12(12)/CAO/84/1925-35 dated 20th July 1984 (Annexure 1). They joined the posts of Senior Technical Assistants on 26.7.84. The Dandakaranya Development Authority vide Order No.120/17/86-IWSU/7780 dated 20th June 1986 surrendered them to the Central(Surplus Staff) Cell for redeployment alongwith two posts of Senior Technical Assistants (Annexure 3). They were, however, reverted to their substantive posts of Junior Technical Assistants vide Office order No.66/4/86/A.II dated 13th August 1986 and No.20(87)/Pkt/Estt/14935-36 dated 14.8.86 (Annexure 4 & 4a respectively). They have moved the Tribunal under section 19 of the Administrative Tribunals Act 1985 to quash the orders contained in Annexure 4 and 4a and to command respondent No.3 to release them for the Central (Surplus Staff) Cell.

2.      The respondents in their counter have maintained that the applicants were reverted on return of two permanent members of the cadre of Senior Technical Assistants who had lien on these two posts. As they were senior to the applicants and as the applicants were appointed only to officiate in the deputation vacancies, their reversion to the substantive posts is not illegal and as such they have submitted that the orders passed by the

DDA vide Annexure 4 and 4a should be allowed to stand.

3. We have heard Mr B.Pal, learned Counsel for the petitioner and Mr A.B Misra, learned Senior Standing Counsel(Central) and perused the records. Mr Pal has urged before us that the promotion of the applicants to the posts of Senior Technical Assistants as in Annexure 1 has been done on a regular basis on the recommendation of a duly constituted DPC and since it was not a stop-gap arrangement, their reversion is in fact a penalty attracting the provisions of Article 311 of the Constitution of India. He has further submitted that by 13th August 1986 when the reversion order was issued, the applicants had completed two years of probation stipulated in the appointment order (Annexure 1), having joined in the posts of Senior Technical Assistant on 26.7.84. Intead of confirming them in the promotional posts they should not have been reverted. Further according to Mr Pal, the order dated 20th June 1986(Annexure 3) having been passed on due deliberation and considering the shrinkage in the activity of the Dandakaranya Project and consequent reduction in staff strength should not only be allowed to stand but should be implemented. Mr Misra, on the other hand, has maintained that the applicants have no right to hold the promotional posts on a permanent basis as they were appointed to officiate against deputation vacancies and when the deputationists who had lien in the posts returned, they would have to be given these

posts and there being no other posts available in the cadre of Senior Technical Assistants there was no alternative for the authorities other than reverting them to their substantive posts of Junior Technical Assistants. He has further urged that the provisions of Article 311 would not be attracted since the reversion was not a penalty but was necessitated by administrative exigencies which was the return of the two permanent members of the cadre from their deputation. He further maintained that under the Central(Surplus Staff) Cell scheme, the junior most amongst the regular members of a cadre are to be reported to the Central(Surplus Staff) Cell on reduction in the staff strength and since the applicants were not regular members of the cadre of Senior Technical Assistants they have to make room for the permanent members of the cadre.

4. Admittedly, the applicants were promoted to officiate in the posts of Senior Technical Assistants on the recommendation of the Departmental Promotion Committee and they were put on probation for a period of two years in the first instant. According to O.M No.22011/6/75-Estt (D) dated 30th December, 1976 from the Cabinet Secretariat (Department of Personnel & Administrative Reforms), which lays down the procedure for making promotions and functions of the Departmental Promotion Committee, the DPC while drawing up a panel of suitable officers for promotion takes into account not only clear vacancies arising out of death, retirement, resignation, regular promotion etc. but also vacancies arising out of deputation. Return of the two permanent incumbents of the posts of Senior

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Technical Assistants has not been disputed at the Bar. They have to be given the posts on which they held lien and as such the applicants who were appointed to the posts on officiation basis have to be reverted in order to make these posts available to the returnees. This is in keeping with the provision of Fundamental Rule 9(13): Chapter -II Definitions, which defines "Lien means the title of a Government servant to hold substantively, either immediately or on the termination of a period or periods of absence, a permanent post, including a tenure post, to which he has been appointed substantively". In the circumstances, therefore, the authorities had no other alternative but to revert the applicants to their substantive post. As regards the contention of learned Counsel for the applicants that having once surrendered the post and the applicants alongwith them to the Central(Surplus Staff) Cell (Annexure 3), the Dandakaranya Development Authority cannot revert them to their substantive post instead of surrendering them to the Central(Surplus Staff)Cell, it may be stated that before this order could be implemented, the deputationists returned and the applicants had to be reverted. The Ministry of Personnel, Training, Administrative Reforms and Pension, which is the administrative Ministry for Surplus Cell had not by then issued any order accepting the proposal of the DDA surrendering the posts and the applicants with them in as much as they had not yet issued any notice on the applicants, taking them on to the roll of the Central (Surplus Staff)Cell. Pending such action by the administrative Ministry

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due to the exigencies of administration necessitated by the return of deputationists, the DDA had no alternative but to revert the applicants and surrendered instead the junior most Senior Technical Assistants alongwith their posts to the Central (Surplus Staff) Cell. The contention of Mr Pal that reversion of the applicants will amount to penalty and without going through the process of a departmental proceedings, they cannot be reverted is not acceptable to us in as much as no departmental proceedings has been initiated and no penalty inflicted as a result thereof. Explanation to Rule 11 CCS(CCA) Rules, 1965 makes it abundantly clear that " reversion of a Government servant officiating in a higher service, grade or post to a lower service, grade or post, on the ground that he is considered to be unsuitable for such higher service, grade or post or on any administrative ground unconnected with his conduct " will not amount to a penalty within the meaning of this rule. Admittedly, the reversion of the applicants is an administrative measure unconnected with their conduct.

5. For the reasons stated above, we are firmly of the view that the order issued by the Dandakaranya Development Authority reverting the applicants vide Annexure 4 and 4a was unavoidable in the circumstances

of the case and as such no illegality has been committed by the authorities. In the result the application fails. The stay order issued is vacated. The parties should bear their own costs.



K.P. ACHARYA, MEMBER (JUDICIAL)

*[Signature]* 3.4.87  
.....  
Vice-Chairman

*[Signature]* 3.4.87  
.....  
Member (Judicial)

Central Administrative Tribunal  
Cuttack Bench, Cuttack  
April 3, 1987/N.J. Joseph.